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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2016–0003; T.D. TTB–144; Ref: Notice No. 158]

RIN: 1513–AC25

Establishment of the Appalachian High Country Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 2,400-square mile “Appalachian High Country” viticultural area in all or portions of the following counties: Alleghany, Ashe, Avery, Mitchell, and Watauga Counties in North Carolina; Carter and Johnson Counties in Tennessee; and Grayson County in Virginia. The viticultural area is not located within any other viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of

petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;

- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Appalachian High Country Petition

TTB received a petition from Johnnie James, owner of Bethel Valley Farms, on behalf of members of the High Country Wine Growers Association, proposing the establishment of the “Appalachian High Country” AVA. The proposed AVA covers approximately 2,400-square miles in all or portions of Alleghany, Ashe, Avery, Mitchell, and Watauga Counties in North Carolina, Carter and Johnson Counties in Tennessee, and Grayson County in Virginia. There are 21 commercially-producing vineyards covering a total of approximately 71 acres distributed throughout the proposed AVA, along with 10 wineries. According to the petition, an additional 8 vineyards comprising approximately 37 acres are planned in the near future. The proposed Appalachian High Country AVA is not located within any established AVA. According to the petition, the

distinguishing features of the proposed Appalachian High Country AVA are its topography, climate, and soils.

The topography of the proposed AVA, which is located within the Appalachian Mountains, is characterized by high elevations and steep slopes. Elevations within the proposed AVA range from 1,338 feet to over 6,000 feet, and most vineyards are planted at elevations between 2,290 and 4,630 feet. The high elevations expose vineyards within the proposed AVA to high amounts of solar irradiance, which promotes grape maturation and compensates for low temperatures and a short growing season. The average slope angle within the proposed AVA is 35.9 degrees, and most vineyards are planted on slopes with angles of 30 degrees or greater. Because of the steep slopes, many of the vineyards within the proposed AVA are terraced to prevent erosion, and most of the vineyards' work is done by hand rather than by machinery. The regions surrounding the proposed AVA all have lower average elevations as well as smaller average slope angles, except for the region to the southwest of the proposed AVA, which has a slightly greater average slope angle.

The proposed Appalachian High Country AVA is also characterized by a cool climate and a short growing season. The average annual temperature within the proposed AVA is 51.5 degrees Fahrenheit. The proposed AVA accumulates an average of 2,635 growing degree days during the growing season, which is approximately 139 days long. Because of the cool climate and short growing season, the proposed AVA is suitable for growing cold-hardy grape varieties such as Marquette, Vidal Blanc, and Frontenac, which do not have a

lengthy maturation time. By contrast, the regions surrounding the proposed AVA have warmer temperatures, longer growing seasons, and higher growing degree accumulations, making these regions more suitable for growing grape varieties that require warmer temperatures and a longer maturation time.

The soils of the proposed Appalachian High Country AVA are derived from igneous and metamorphic rocks such as granite and gneiss. All of the common soil series within the proposed AVA are described as deep, well-drained soils with a fine, loamy texture. The well-drained soils help reduce the risk of rot and fungus in the grapevines. Organic matter comprises up to 14 percent of the soils within the proposed AVA, providing an excellent source of nutrients for vineyards. The most prevalent soil series is the Tusquitee–Edneyville series, which covers approximately 24 percent of the proposed AVA. By contrast, in the surrounding regions, other soil series are more prominent. To the northeast of the proposed AVA, the Hayesville series is the most common soil series, and the Frederick–Carbo soil series is most commonly found in the region northwest of the proposed AVA. Southeast of the proposed AVA, the dominant soil series is the Hiwassee–Cecil association, and the Chester–Ashe series is the most common soil series to the southwest of the proposed AVA.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 158 in the **Federal Register** on May 3, 2016 (81 FR 26507), proposing to establish the Appalachian High Country AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also

compared the distinguishing features of the proposed AVA to the features of the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 158.

In Notice No. 158, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on July 5, 2016. TTB received a total of 68 comments in response to Notice No. 158. During the comment period, TTB received 67 comments, including comments from local winery and vineyard owners, local residents, the president of the Tennessee Farm Winegrowers Alliance, officers from the University of Tennessee and the North Carolina State University Agricultural Extension Offices, the mayor of Johnson City (TN), the Johnson County (TN) Tourism Committee, the Johnson County Chamber of Commerce, the Appalachian Region Wine Growers Association, the Carter County (TN) Tourism Association, the Elizabethton (TN) Planning and Economic Development Department, a former mayor of Elizabethton, a former Tennessee State Representative, and the owner and publisher of the Carolina Mountain Life magazine. After the comment period closed, TTB received an additional letter of support signed by two U.S. Representatives from North Carolina, a Representative from Virginia, and a Representative from Tennessee. Sixty-seven of the 68 total comments received supported the proposed AVA, with

many commenters stating their belief that an AVA designation could promote economic growth in their communities.

One comment opposed the proposed Appalachian High Country AVA. The commenter, a neighbor of one of the vineyards in the proposed AVA, states that the vineyard owner frequently uses a propane cannon to deter birds and other wildlife from eating the grapes. The commenter asserts that the noise from the cannon affects her ability to enjoy her property and that the vineyard owner has refused requests from neighbors to use alternate wildlife deterrent methods such as netting. The commenter states her belief that approval of the proposed AVA would encourage the development of new vineyards that might also use propane cannons. The commenter states that she cannot support the establishment of the proposed AVA unless TTB prohibits vineyard owners in the AVA from using propane cannons within a mile of other residences.

The prohibition or restriction of the use of wildlife deterrent devices is outside the scope of TTB's authority. The use of such devices by current or future vineyard owners is not related to the name, boundaries, or distinguishing features of the proposed area and, as a result, is not a factor for TTB's consideration in the establishment of a proposed AVA.

TTB Determination

After careful review of the petition and the comments received, TTB finds that the evidence provided by the petitioner supports the establishment of the Appalachian High Country AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the

TTB regulations, TTB establishes the “Appalachian High Country” AVA in portions of North Carolina, Tennessee, and Virginia, effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary of the AVA in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label.

Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of this AVA, its name, “Appalachian High Country,” will be recognized as a name of viticultural significance under § 4.39(i)(3). The text of the regulation clarifies this point. Consequently, wine bottlers using the name “Appalachian High Country” in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Appalachian High Country AVA will not affect any existing AVA. The establishment of the Appalachian High Country AVA will allow vintners to use “Appalachian High Country” as an appellation of origin for wines made primarily from grapes grown within the Appalachian High Country AVA if the wines meet the eligibility requirements for the appellation.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor’s efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Subpart C is amended by adding § 9.260 to read as follows:

§ 9.260 Appalachian High Country.

(a) Name. The name of the viticultural area described in this section is “Appalachian High Country”. For purposes of part 4 of this chapter, “Appalachian High Country” is a term of viticultural significance.

(b) Approved maps. The 46 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Appalachian High Country viticultural area are titled:

- (1) Unicoi, Tenn.—N.C, 1939; photorevised 1978;
- (2) Iron Mountain Gap, Tenn.—N.C., 1960; photorevised 1968;
- (3) Johnson City, Tenn., 1959; photorevised 1968;

- (4) Elizabethton, Tenn., 1959; photorevised 1968;
- (5) Watauga Dam, Tenn., 1960;
- (6) Carter, Tenn., 1938; photorevised 1969;
- (7) Keensburg, Tenn., 1960;
- (8) Doe, Tenn., 1938; photorevised 1969;
- (9) Shady Valley, Tenn.–VA., 1960; photorevised 1970; photoinspected 1988;
- (10) Laurel Bloomery, Tenn.–VA., 1938; photorevised 1969;
- (11) Grayson, Tenn.–N.C.–VA., 1959; photoinspected 1976;
- (12) Park, N.C.–VA., 1959; photorevised 1978;
- (13) Whitetop Mountain, VA., 1959; photorevised 1978;
- (14) Trout Dale, VA., 1959; photorevised 1978; photoinspected 1988;
- (15) Middle Fox Creek, VA., 1959; photoinspected 1988;
- (16) Cedar Springs, VA., 1959; photorevised 1978; photoinspected 1988;
- (17) Speedwell, VA., 1968; photorevised 1979;
- (18) Cripple Creek, VA., 1968; photoinspected 1988;
- (19) Austinville, VA., 1965; photorevised 1979; photoinspected 1982;
- (20) Galax, VA., 1965; photorevised 1984;
- (21) Cumberland Knob, N.C.–VA., 1965; photorevised 1977;
- (22) Lamsburg, VA.–N.C., 1965; photorevised 1977;
- (23) Roaring Gap, N.C., 1971;
- (24) Glade Valley, N.C., 1968;
- (25) Traphill, N.C., 1968;

- (26) Whitehead, N.C., 1968;
- (27) McGrady, N.C., 1968; photoinspected 1984;
- (28) Horse Gap, N.C., 1968;
- (29) Laurel Springs, N.C., 1968;
- (30) Glendale Springs, N.C., 1967;
- (31) Maple Springs, N.C., 1966;
- (32) Deep Gap, N.C., 1967;
- (33) Buffalo Cove, N.C., 1967;
- (34) Globe, N.C., 1959;
- (35) Grandfather Mountain, N.C., 1960; photorevised 1978;
- (36) Newland, N.C., 1960; photorevised 1978;
- (37) Linville Falls, N.C., 1994;
- (38) Ashford, N.C., 1994;
- (39) Little Switzerland, N.C., 1994;
- (40) Spruce Pine, N.C., 1994;
- (41) Celo, N.C., 1994;
- (42) Micaville, N.C., 1960; photorevised 1978;
- (43) Bakersville, N.C.,—Tenn., 1960; photorevised 1978;
- (44) Burnsville, N.C., 1998;
- (45) Hunt Dale, N.C.—Tenn., 1939; and
- (46) Chestoa, Tenn.—N.C., 1939; photorevised 1978.

(c) Boundary. The Appalachian High Country viticultural area is located in all or portions of Alleghany, Ashe, Avery, Mitchell, and Watauga Counties in North Carolina; Carter and Johnson Counties in Tennessee; and Grayson County in Virginia. The boundary of the Appalachian High Country viticultural area is as described below:

(1) The beginning point is on the Unicoi map, at the point where the Unicoi/Mitchell County line intersects with an unnamed road known locally as Unaka Mountain Road near Beauty Spot Gap, Tennessee. From the beginning point, proceed northeasterly approximately 7.3 miles along the Unicoi/Mitchell County line, crossing onto the Iron Mountain Gap map, to the intersection of the Unicoi/Mitchell County line with the Carter County line; then

(2) Proceed northerly along the Unicoi/Carter County line approximately 9.3 miles, crossing back onto the Unicoi map and then onto the Johnson City map, to the intersection of the Unicoi/Carter County line with the 2,000-foot elevation contour, southeast of an unnamed road known locally as Whispering Pine Road; then

(3) Proceed southeasterly along the meandering 2,000-foot elevation contour, crossing onto the Unicoi map and then back onto the Johnson City map, and continuing onto the Elizabethton map for approximately 19 miles to the intersection of the elevation contour with an unnamed road known locally as Brimer Road near Bremer Hollow; then

(4) Proceed northwesterly approximately 1,500 feet along Brimer Road to an unnamed road known locally as Jenkins Hollow Road; then

(5) Proceed easterly approximately 1.4 miles along Jenkins Hollow Road, crossing the Doe River, to U.S. Route 321 in the town of Valley Forge, Tennessee; then

(6) Proceed north approximately 400 feet along U.S. Route 321 to an unnamed road known locally as Ruby Harmon Road; then

(7) Proceed northeasterly approximately 360 feet along Ruby Harmon Road to an unnamed road known locally as Nanny Goat Hill Road; then

(8) Proceed easterly approximately 0.2 mile along Nanny Goat Hill Road to the 1,800-foot elevation contour, east of an unnamed road known locally as Gene Mathes Road; then

(9) Proceed northeasterly approximately 0.4 mile along the 1,800-foot elevation contour to an unnamed road known locally as Franklin Lane; then

(10) Proceed southerly approximately 0.3 mile along Franklin Lane to the 2,000-foot elevation contour; then

(11) Proceed northeasterly along the meandering 2,000-foot elevation contour, crossing over Hardin Branch, Clover Branch, South Pierce Branch, and North Pierce Branch, to a fifth, unnamed stream; then

(12) Proceed northerly approximately 0.47 mile along the unnamed stream to an unnamed road known locally as Wilbur Dam Road; then

(13) Proceed southeasterly approximately 0.25 mile along Wilbur Dam Road to Wilbur Dam; then

(14) Proceed northeasterly across Wilbur Dam to the marked transmission line; then

(15) Proceed northerly approximately 0.5 mile along the transmission line to the 2,000-foot elevation contour; then

(16) Proceed northeasterly approximately 19 miles along the meandering 2,000-foot elevation contour, crossing over the Watauga Dam map and onto the Carter map, and continuing along the 2,000-foot elevation contour as it crosses over State Route 91 near Sadie, Tennessee, and turns southwesterly, and continuing southwesterly for approximately 22.2 miles along the 2,000-foot elevation contour, crossing onto the Keensburg map and circling Carter Knob, to the intersection of the 2,000-foot elevation contour with the Carter/Sullivan County line; then

(17) Proceed southeasterly, then northeasterly, approximately 7 miles along the Carter/Sullivan County line to an unnamed road known locally as National Forest Road 56, near Low Gap, Tennessee; then

(18) Proceed easterly approximately 0.75 mile along National Forest Road 56, crossing onto the Carter map, to the Carter/Sullivan County line; then

(19) Proceed easterly approximately 10.4 miles along the Carter/Sullivan County line, crossing over the Doe map (northwestern corner) and onto the Shady Valley Map, to the intersection of the Carter/Sullivan County line with the Johnson County line at Rich Knob, Tennessee; then

(20) Proceed northeasterly approximately 13.4 miles along the Johnson/Sullivan County line, crossing onto the Laurel Bloomery map, to the intersection of the Johnson/Sullivan County line with the Washington County line at the Virginia/Tennessee State line; then

(21) Proceed easterly approximately 10 miles along the Johnson/Washington County line, crossing onto the Grayson map, to the intersection of the Johnson/Washington County line with the Grayson County line; then

(22) Proceed east, then northeasterly, then southeasterly, along the Grayson County line, crossing over the Park, Whitetop Mountain, Trout Dale, Middle Fox Creek, Cedar Springs, Speedwell, Cripple Creek, Austinville, Galax, and Cumberland Knob maps and onto the Lambsburg map, to the intersection of the Grayson County line with the Surry County line and an unnamed road known locally as Fisher's Peak Road, at the Virginia/North Carolina State line; then

(23) Proceed west along the Grayson/Surry County line, crossing back onto the Cumberland Knob map, to Alleghany County line; then

(24) Proceed southerly, then northwesterly, then southwesterly along the Alleghany County line, crossing over the Roaring Gap, Glade Valley, Traphill (northeastern corner), Whitehead, McGrady (northwestern corner), Horse Gap, and Laurel Springs map, then back onto the Horse Gap map and continuing along the Alleghany County line on the Horse Gap map to the Ashe/Wilkes County line at Mulberry Gap, North Carolina; then

(25) Proceed westerly, then southwesterly along the Ashe/Wilkes County line, crossing over the Glendale Springs and onto the Maple Springs map, then back onto the Glendale Springs map, then back onto the Maple Springs map, and continuing along the Ashe/Wilkes County line on the Maple Springs map to

the intersection of the Ashe/Wilkes County line and the Watauga County line at Thomkins Knob, North Carolina; then

(26) Proceed southwesterly along the Watauga/Wilkes County line, crossing over the Deep Gap map (southeastern corner) and onto the Buffalo Cove map, to the intersection of the Watauga/Wilkes County line and the Caldwell County line at White Rock Mountain, North Carolina; then

(27) Proceed west along the Watauga/Caldwell County line, crossing over the Globe map and onto the Grandfather Mountain map, to the intersection of the Watauga/Caldwell County line with the Avery County line at Calloway Peak, North Carolina; then

(28) Proceed southeasterly approximately 1.8 miles along the Caldwell/Avery County line to the boundary of the Blue Ridge Parkway at Pilot Knob, North Carolina; then

(29) Proceed southwesterly approximately 11.6 miles along the Blue Ridge Parkway boundary, crossing over the Newland map (southeastern corner) and onto the Linville Falls map, to the intersection of the parkway boundary with the Avery/Burke County line; then

(30) Proceed northwesterly, then southwesterly, for a total of approximately 4.2 miles along the Avery/Burke County line to the McDowell County line; then

(31) Proceed southerly approximately 5 miles along the Avery/McDowell County line to the Mitchell County line; then

(32) Proceed southerly, then southwesterly, along the McDowell/Mitchell County line, crossing over the Ashford (northwestern corner) and Little Switzerland (northeastern corner) maps and onto the Spruce Pine map, then back onto the Little Switzerland map and continuing along the McDowell/Mitchell County line, crossing onto the Celo map, to the intersection of the McDowell/Mitchell County line with the Yancey County line; then

(33) Proceed west then northerly along the Mitchell/Yancey County line, crossing over the Micaville, Bakersville, Hunt Dale (southeastern corner), and Burnsville maps, then back onto the Hunt Dale map and continuing along the Mitchell/Yancey County line, crossing onto the Chestoa map, to the intersection of the Mitchell/Yancey County line with the Mitchell/Unicoi County line, which is concurrent with the Tennessee/North Carolina State line; then

(34) Proceed northeasterly along the Mitchell/Unicoi County line, crossing back over the Huntsdale (northwestern corner) map and onto the Unicoi map, returning to the beginning point.

Signed: September 14, 2016.

John J. Manfreda,

Administrator.

Approved: October 17, 2016.

Timothy E. Skud,

Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).

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